

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

JOSEPH P. PALMISANO,
Bar No. 012839

Respondent.

PDJ-2016-9098

**FINAL JUDGMENT AND
ORDER**

[State Bar File Nos. 15-1753, 15-
2362, 15-2394, 15-2949, 12-3190,
13-3041 & 13-3189]

FILED MAY 8, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on April 28, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **JOSEPH P. PALMISANO, Bar No. 012839**, is suspended for six months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective August 1, 2017.

IT IS FURTHER ORDERED Mr. Palmisano shall be placed on probation for two (2) years commencing from the date of his reinstatement.

IT IS FURTHER ORDERED as a term of probation, Mr. Palmisano shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days of his reinstatement. Mr. Palmisano shall submit to a LOMAP examination of his office procedures. Mr. Palmisano shall sign terms and conditions of participation,

including reporting requirements, which shall be incorporated herein. Mr. Palmisano shall actively participate and successfully complete LOMAP. Mr. Palmisano shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED as a term of probation, Mr. Palmisano shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days of his reinstatement to schedule a MAP assessment. Mr. Palmisano shall submit to a MAP assessment and actively participate and successfully complete all recommended treatment and terms. The Compliance Monitor shall develop terms and conditions of participation including reporting requirements, which shall be incorporated herein. Mr. Palmisano shall be responsible for any costs associated with participation in MAP.

IT IS FURTHER ORDERED, Mr. Palmisano shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

NON-COMPLIANCE LANGUAGE

If Mr. Palmisano fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a

hearing within 30 days to determine whether a term of probation has been breached and, if so, order a sanction. If there is an allegation that Mr. Palmisano failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED pursuant to Rule 72 Ariz. R. Sup. Ct., Mr. Palmisano shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED Mr. Palmisano shall pay the costs and expenses of the State Bar of Arizona for \$1,680.00, within thirty (30) days from this order. There are no costs or expenses incurred by the Presiding Disciplinary Judge's Office with these disciplinary proceedings.

DATED this 8th day of May, 2017.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 8th day of May, 2017,
And mailed May 9, 2017, to:

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Respondent's Counsel

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

JOSEPH P. PALMISANO,
Bar No. 012839

Respondent.

PDJ-2016-9098

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar File Nos. 15-1753, 15-
2362, 15-2394, 15-2949, 12-3190,
13-3041 & 13-3189]

FILED MAY 8, 2017

An Agreement for Discipline by Consent was filed on April 28, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct. Probable cause orders were entered on April 26, April 29 and December 28, 2016. Because of the multiple probable cause orders, the State Bar filed an amended complaint on February 3, 2017. Mr. Palmisano filed his answer to that amended complaint on February 17, 2017.

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline..." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved..." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Palmisano has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be

asserted upon approval of the proposed form of discipline. Notice of this Agreement and an opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was provided by letter to the complainant(s) by letters dated on April 27, 2017. No objections have been filed.

The thirty nine page Agreement details a factual basis to support the conditional admissions. Mr. Palmisano conditionally admits to all counts. Those facts are summarized here.

At all times Mr. Palmisano was a lawyer licensed to practice law in the State of Arizona since October 21, 1989. He is the owner and managing attorney of the Acacia Law Group (“ALG”) primarily located in Mesa, Arizona with an office also maintained in Tucson, Arizona at all times pertinent to the complaint. Mr. Palmisano engaged in a practice of taking out-of-county clients and “contracting” with other attorneys to perform the actual legal services.

Under Count 1, (SB 15-1753) the client lived in New York. He hired ALG and paid \$1,500 to file a petition to modify his probation in Navajo County. Despite repeated phone calls requesting an update on his matter, Mr. Palmisano did not respond to the calls for ten months and filed nothing with the court. When the client asked for a written accounting, he was only given a verbal description of the services done. When client demanded a refund, he was referred to and spoke for the first time to Mr. Palmisano who demanded another \$1,000 to file the motion. A month

later Mr. Palmisano filed a Notice of Appearance without requiring the additional \$1,000. The probation officer filed a petition waiving the deferred jail time which was granted by the court.

Mr. Palmisano admits he violated Rule 42, ERs 1.2 (failed to comply with the requests of his client regarding the representation), 1.3 (diligence), 1.4 (communication), 5.1 (failed in his responsibilities as owner and managing attorney to assure all lawyers in the firm conformed to the Rules of Professional Conduct), and 8.4(d) (conduct prejudicial to the administration of justice).

Under Count 2, (SB 15-2362) Mr. Palmisano represented multiple clients in Tucson Municipal Court cases. Mr. Palmisano never personally appeared in any of these cases. Mr. Palmisano missed multiple hearings and was ordered to personally appear in one of those matters. Mr. Palmisano admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 3.2 (failed to expedite the litigation), 5.1 (failed in his responsibilities as owner and managing attorney to assure all lawyers in the firm conformed to the Rules of Professional Conduct), and 8.4(d) (conduct prejudicial to the administration of justice).

Under Count 3, (SB 15-2394) client contacted Mr. Palmisano regarding a Pima County Justice Court traffic case. Client explained in his initial consultation that there was video footage of the intersection that he wanted to obtain for his defense. Neither Mr. Palmisano nor ALG tried to obtain the video. Mr. Palmisano

sent an ALG notice of appearance form to a Tucson lawyer to file with the court. On November 24, Mr. Palmisano informed that lawyer he was unsure of what coverage of legal services would be needed in January.

The trial was set for January 13, 2015. On January 6, Mr. Palmisano asked the Tucson attorney for the first time to handle the hearing. When the Tucson attorney contacted the client that same day, it was the first time client was told that Tucson attorney was covering the traffic hearing. Mr. Palmisano handled the appeal without charge and lost the appeal.

Mr. Palmisano admits he violated Rule 42, ERs 1.4 (communication), 5.1 (failed in his responsibilities as owner and managing attorney to assure all lawyers in the firm conformed to the Rules of Professional Conduct) and 8.4(d) (conduct prejudicial to the administration of justice).

Under Count 4, (SB 15-2949) on November 3, 2015, at 9:00 a.m., Mr. Palmisano was to appear in two Pima County Superior Court cases at the same time. *State v. Way* and *State v. Owens*. One was for a change of plea and the other was scheduled for a settlement conference. Mr. Palmisano had filed no motions to continue either matter.

The prior day at 4:00 p.m. a secretary for Mr. Palmisano asking if motions had been received. As none had been filed, the judicial assistant asked that the motion be emailed to her. When the motions were received by email, one had the

case captioned in Justice Court with the wrong case number. Mr. Palmisano said he was in a trial in Maricopa County on November 3 (*State v. Zorn*). Mr. Palmisano also had personal knowledge that he had a Criminal trial also set on November 3 in another division of the Pima County Superior Court in *State v. Rheinlander*.

In the State Bar investigation it was discovered the statement to the court by Mr. Palmisano was not true. He was not in trial in *Zorn* in Maricopa County on November 3. Mr. Palmisano had been ordered to appear at 10:00 a.m. on November 3 to set a trial schedule.

Mr. Palmisano admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), 5.3 (failed in his responsibilities as owner and managing attorney to assure all non-lawyers in the firm conformed to the Rules of Professional Conduct) and 8.4(d) (conduct prejudicial to the administration of justice).

Under Count 5, (SB 12-3190) the grandparents of client paid Mr. Palmisano \$10,000 to represent their granddaughter. In a separate case they paid Mr. Palmisano \$6,000 to represent their daughter in Indiana regarding an Arizona extradition hold for a relative. However, Arizona released the extradition shortly thereafter eliminating the purpose of the representation. Mr. Palmisano refused to refund any of the prepaid fee on the daughter's case as he had applied the entirety of those monies to the granddaughter's case.

They repeatedly requested the refund from Mr. Palmisano who finally set a time to personally meet with them. Mr. Palmisano did not appear. The meeting was set for the following day. The discussion became profane and Mr. Palmisano chest bumped the grandfather before forcing them both out of his office. There is no statement of how the fee issue was resolved.

Mr. Palmisano admits he violated Rule 42, ERs 1.5 (accepted prepaid legal fees related to his anticipated representation of one client, but applied the fees to the outstanding bill of another client), 1.16 (failed to promptly return the unearned fees and property), and Rule 41(g)/31(a)(E) (engaged in unprofessional conduct as defined by Rule 31(a)(E)).

Under Count 6, (SB 13-3041) in *State v. Walsh*, Mr. Palmisano was hired by Paul Walsh who was indicted for stabbing his brother John. Paul believed his brother John had picked up a brick during an argument and stabbed him in “self-defense.” Under a plea agreement, Paul was placed on probation for two years and was to have no contact with John. Mr. Palmisano filed no motion to withdraw.

Thereafter, John Walsh was indicted for shooting Paul Walsh and then himself. Palmisano represented John. After the court removed him for a non-waivable conflict, Mr. Palmisano argued he obtained no “attorney-client” information from Paul and that the parents had waived any conflict. The County Attorney referred to a purported conversation between Mr. Palmisano and the

detectives. In that conversation Mr. Palmisano told them Paul had been using drugs. Mr. Palmisano questioned how the State could put his statements in context if they were not present.

Mr. Palmisano admits he violated Rule 42, ERs 1.6 (revealed client information related to the representation without client consent), 1.9(a) (failed in duties to prior client by representing another in the same or similar matter in which their interests were material advise to the former client without consent of that client), 1.9(c) (used the information relating to the representation to the disadvantage of the former client), and 8.4(d) (conduct prejudicial to the administration of justice).

Under Count 7, (SB 13-3189) the client of Mr. Palmisano was charged in the Superior Court criminal case of *State v. Dan Gaspar*. The Court found at the initial pretrial conference on June 24, 2013, that Mr. Palmisano failed to comply with his disclosure obligations. On September 9, 2013, the State moved to determine counsel as Mr. Palmisano had been indicted in *State v. Palmisano*. While the court permitted Mr. Palmisano to remain as counsel, he was ordered not to use coverage attorneys outside his own firm.

By October 8, 2013, Mr. Palmisano had failed to produce a Rule 15.2 disclosure as ordered by the court. Mr. Palmisano was again ordered to produce the disclosure. It was ordered to be produced within three days and he was ordered to personally appear in court on October 11, 2013. Mr. Palmisano filed no disclosure

statement. The Court ordered he produce the disclosure statement by October 14. He did not. He was sanctioned \$250.

On October 30, Mr. Palmisano avowed to the Court he had paid the sanction. That was untrue as he had not paid the sanction. The court set an O.S.C. in re contempt for November 12, 2013. Mr. Palmisano had still not paid the sanction and blamed his assistant. He was sanctioned an additional \$250. He paid the sanction.

Mr. Palmisano admits he violated Rule 42, ERs 1.3 (diligence), 3.2 (failed to expedite the litigation), 3.4(c) (disobeyed an obligation under the rules of a tribunal), 3.4(d) (in pretrial failed to make reasonably diligent efforts to comply with a legally proper discovery request by opposing party) 8.4(d) (conduct prejudicial to the administration of justice), and 54(c) (knowingly violated the rules and orders of the court).

The agreed upon sanctions include a six (6) month suspension with two (2) years of probation and the payment of \$1,680.00 in costs and expenses within thirty (30) days.

STANDARDS AND SANCTIONS ANALYSIS

Under Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree under that each of the violations by Mr. Palmisano warrant a suspension under the *Standards* applicable to each violation. The parties stipulate Mr.

Palmisano acted both knowingly and negligently. They specify his conduct violated his duty to his client, the profession, the legal system and the public.

The parties agree the following aggravating factors are present in the record: *Standard* 9.22(a) prior disciplinary offenses, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, and 9.22(i) substantial experience in the practice of law. There is no mitigation.

The parties submit that the misconduct is related to the failings of the management of the office by Mr. Palmisano. There are far too many events described to fully embrace that Mr. Palmisano simply can't manage his office and staff. The admissions far more support that Mr. Palmisano won't rather than can't manage his calendar, his duties, or his practice. Notwithstanding, the object of lawyer discipline is to protect the public, the profession and the administration of justice, not punish the lawyer.

The parties proposed order includes ample tools and opportunity for Mr. Palmisano to improve his conduct through the Law Office Management Assistance Program (LOMAP) and the State Bar's Member Assistance Program (MAP). Mr. Palmisano must hoist his anchor out of the muck and mire of his own conduct through these programs. The proposed suspension puts Mr. Palmisano on clear notice that his failings are serious and multiple.

Upon consideration, the Presiding Disciplinary Judge finds the proposed sanctions of a six (6) month suspension with detailed terms of probation meets the objectives of attorney discipline.

The parties submitted a Memorandum re Suspension Effectiveness. It is incorporated herein. It was represented Mr. Palmisano has only seven clients in seven pending cases. He is not accepting clients and will not represent any other clients directly or indirectly. These seven clients have cases which Mr. Palmisano is personally handling and are not being handled by associates or other outside counsel. He requests he be precluded from practicing law except as to these seven clients. His representation will conclude not later than August 1, 2017 or he will withdraw from representation.

IT IS ORDERED Mr. Palmisano shall deliver a copy of the agreement for discipline by consent, this Decision and Order, the Memorandum Re Suspension Effectiveness, and the Judgment entered in this proceeding to each client, and the assigned judge in each of those seven cases and file an affidavit attesting to their delivery with the disciplinary clerk within ten (10) business days. Contingent upon the timely filing of the affidavit, the effective suspension date shall be August 1, 2017.

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: six (6)

months suspension and upon reinstatement, two (2) years of probation (LOMAP and MAP), and costs and expenses of the disciplinary proceeding totaling \$1,680.00, to be paid within thirty (30) days from this date. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order is signed this date.

DATED this May 8, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 8th day of May, 2017,
And mailed May 9, 2017, to:

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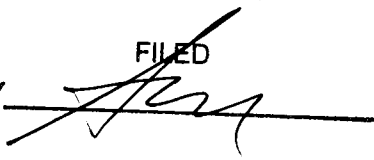
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Respondent's Counsel

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 28 2017

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**JOSEPH P. PALMISANO
Bar No. 012839**

Respondent.

PDJ 2016-9098

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar Nos. 15-1753, 15-2362,
15-2394, 15-2949, 12-3190, 13-3041
and 13-3189]

The State Bar of Arizona, through undersigned Senior Bar Counsel, and Respondent, Joseph P. Palmisano, through undersigned counsel Michael D. Kimerer, to hereby submit this Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Probable cause orders were entered on April 26, 2016 in SB15-1753, 15-2362, 15-2394 and 15-2949; April 29, 2014 in SB12-3190; and December 28, 2016 in SB13-3041 and 13-3189. The State Bar's formal second amended complaint was been filed in this matter on February 3, 2017 and Respondent filed an answer on February 17, 2017.

Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant(s) by letters dated April 27, 2017.

Complainant(s) have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated the following ethical rules:

Count 1 (SB 15-1753):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to comply with the requests of the client regarding the representation;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;
3. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 2 (SB 15-2362):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation which was the subject of the litigation;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 3 (SB 15-2394):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;

2. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and
3. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 4 (SB 15-2949):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation which was the subject of the litigation;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.3 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all nonlawyers' conduct is compatible with the professional obligations of the lawyer; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 5 (SB 12-3190):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent accepted prepaid legal fees related to his anticipated representation of one client, but applied the fees to the outstanding bill of another client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to promptly return the unearned fees and property; and
3. Rule 41(g)/31(a)(E) – Respondent engaged in unprofessional conduct as defined by Rule 31(a)(E).

Count 6 (SB 13-3041):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.6 – Respondent revealed information related to the representation of a client without the client's informed consent;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.9(a) – Respondent formerly represented a client in a matter and thereafter represented another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client when the former client did not give informed consent in writing;
3. Rule 42, Ariz. R. Sup. Ct., ER1.9 (c) – Respondent formerly represented a client in a matter and thereafter used information relating to the representation to the disadvantage of the former client; and
4. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

Count 7 (SB 13-3189):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation;
2. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.4(c) – Respondent knowingly disobeyed an obligation under the rules of a tribunal;
4. Rule 42, Ariz. R. Sup. Ct., ER 3.4(d) – In pretrial procedures, Respondent failed to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct that was prejudicial to the administration of law; and
6. Rule 54(c), Ariz. R. Sup. Ct. – Respondent knowingly violated the rules and orders of the court.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Six Month Suspension with Two Years of Probation.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona since October 21, 1989.
2. Respondent is the owner and managing attorney of the Acacia Law Group (hereinafter referred to as "ALG"). While ALG is primarily located in Mesa, Arizona, ALG also maintained an office in Tucson, Arizona at all times pertinent to the Complaint.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

3. ALG engaged in a practice of taking out-of-county clients and “contracting” with other attorneys to perform the actual legal services related to the representation.

4. William Parven (hereinafter referred to as “Parven”), Derek A. Zazueta (hereinafter referred to as “Zazueta”), Vanessa Moss (hereinafter referred to as “Moss”) and Michelle Behan (hereinafter referred to as “Behan”) were four such attorneys.

COUNT ONE (File No. 15-1753/Stockton)

5. Mark Stockton (“Stockton”) originally contacted a person at ALG believed to be Zazueta regarding representation in the Navajo County Superior Court case of *State v. Stockton*, CR201000250.

6. Stockton requested that the firm file a Petition to Modify his probation terms.

7. At all times pertinent, Stockton lived in the State of New York.

8. Zazueta talked to Stockton on a couple of occasions, but he was “not attorney of record and did not receive any portion of the payments made by Stockton.” Similarly, Zazueta “did not appear in court with Mr. Stockton...(and)

do (or sic) not have access to his file...". Finally, Zazueta told Stockton that, "he needs to speak with Mr. Palmisano to discuss ways to handle his case."

9. On September 2014, Stockton made an initial payment of \$500.00 to ALG with additional payments totaling \$1,500.00.

10. Despite repeated phone calls requesting an update of the case, Stockton was unable to receive a response from Respondent.

11. Despite asking for an accounting of the fees paid, Stockton was only able to obtain a verbal description of the services performed.

12. When Stockton called in order to demand a refund so that he could find a law firm with the time to assist him, Stockton was transferred to Respondent.

13. In or around July 2015, Respondent informed Stockton that he would need an additional \$1,000.00 to file the motion to modify Stockton's probation.

14. On August 10, 2015, Respondent filed a Notice of Appearance and Petition to Modify Stockton's probation terms without requiring Stockton to pay the \$1,000.00.

15. On or about September 1, 2015, the Navajo County probation officer filed a petition waiving the deferred jail time which was ultimately granted by the Court.

COUNT TWO (File No. 15-2362/Judge Million)

16. In 2015, Respondent asked Moss to provide coverage legal services in various Tucson Municipal Court cases. These cases include, but are not limited to, *State v. Ferrier*, TR14124679, *State v. Alcorn*, TR15057211 and *State v. Way*, TR15023492/TR14146596.

***State v. Ferrier*, TR14124679**

17. On October 27, 2015, Judge Wendy A. Million (hereinafter referred to as "Judge Million") issued a minute entry in *State v. Ferrier*, TR14124679 documenting Respondent's practices in the Tucson Municipal Court and the client's request that Respondent be removed from the case. Judge Million then removed Respondent from the case, substituted Moss as attorney of record, granted Moss's request for a pretrial continuance and set a status hearing and jury trial.

18. Shortly thereafter, Moss terminated her coverage relationship with ALG because she ran into difficulty receiving direction and compensation from Respondent.

19. On November 24, 2015, Judge Million permitted Moss to withdraw as attorney of record and reappointed the public defender's office.

State v. Alcorn, TR15057211

20. On December 14, 2015, Judge Million issued a minute entry in *State v. Alcorn, TR15057211* documenting the following events:

- a. The client failed to appear as ordered;
- b. The case was originally scheduled for an evidentiary hearing on December 1, 2015;
- c. On November 25, 2015, Respondent moved for a continuance of the December 1, 2015, hearing, having never filed any motions;
- d. Respondent has never personally appeared in any of his several cases before Judge Million;
- e. Judge Million denied a motion to continue the December 14, 2015, hearing, so Respondent requested Behan to appear on his behalf; and
- f. Judge Million expects Respondent to be present in person for a January 11, 2016, pretrial conference.

21. Later, the Court amended the order to reflect that the client appeared and was unaware that Respondent was not going to be present.

22. Behan informed A/CAP attorney, Thomas McCauley, that Respondent contacted Behan on December 14, 2015 and asked her to provide coverage in *State v. Alcorn, TR15057211*.

23. While Behan did not remember if Respondent provided her with the reason for his inability to appear, she did remember that Respondent informed her that he was reviewing information with Chester Flaxmeyer.

***State v. Way*, TR15023492/TR14146596**

24. On December 16, 2015, Judge Million issued a minute entry in *State v. Way*, TR15023492/TR14146596 documenting the following events:

- a. While Moss appeared as coverage attorney, Respondent failed to appear at an August 19, 2015, hearing;
- b. No one appeared at a September 9, 2015, hearing;
- c. No one appeared at a September 30, 2015, hearing;
- d. No one appeared at a November 24, 2015, hearing;
- e. When Judge Million previously decided that Respondent abandoned his client, she re-appointed the PD's Office; but
- f. Judge Million withdrew the PD's Office again when Respondent filed a motion to continue the December 16, 2015, hearing indicating that he still represented the client.

25. Respondent informed A/CAP attorney, Thomas McCauley that he personally handles the felony offenses in Tucson, but has had a problem securing a good lawyer in Tucson to handle the misdemeanor offenses.

COUNT THREE (File No. 15-2394/Burland)

26. On or about November 11, 2014, Jay Burland ("Burland") contacted Respondent regarding representation in the Pima County Consolidated Justice

Court traffic case and later the related Superior Court appellate case of *State v. Burland*, TR14-031563 and CT20150021.

27. During the initial consultation with the Mesa office, Burland informed ALG that there was footage of the intersection that he wanted to obtain in defense of his traffic violation.

28. On or about November 13, 2014, Burland paid ALG \$500.00 for the representation.

29. On November 18, 2014, Respondent's office sent an ALG Notice of Appearance for Parven to sign and file with the Court.

30. On or about November 21, 2014, ALG confirmed receipt of the \$500.00 and provided Burland with Parven's name and ALG email address.

31. On November 24, 2014, Parven informed Burland that he filed the Notice of Appearance and requested a civil traffic hearing. The hearing was ultimately scheduled for January 13, 2015.

32. On December 24, 2014, Respondent contacted Parven and informed Parven that Respondent was unsure of what, if any, coverage legal services would be needed in January 2015.

33. On January 6, 2015, Respondent requested Parven to cover Burland's January 13, 2015, hearing.

34. On January 6, 2015, Parven emailed Burland and explained for the first time that he would "be the attorney covering your traffic hearing next Tuesday the 13 (sic). I am wondering if you will be present."

35. When Parven did not receive a response, he attempted to contact Burland again the night before the hearing and they arranged a time to meet before the hearing.

36. Parven indicates that when they met prior to the hearing and Burland asked Parven if he had the intersection footage he originally requested, Parven explained that the cameras at the intersection in question do not record and only transmit a live feed.

37. While the Court took the matter under advisement, Burland was upset and continued to contact Respondent and Parven after the hearing.

38. While Parven explained that ALG were his attorneys and that ALG was no longer paying Parven for his coverage services, Parven continued to communicate with Burland by email regarding the trial, ways to electronically

access the case file, the appellate process and his amenability to personally meet to discuss the case further.

39. On or about January 23, 2015, Parven informed Burland that the Court ruled against him and explained the process and timing of filing a notice of appeal. Parven also followed up later with a text message reminding Burland of the approaching deadline.

40. On January 29, 2015, Respondent filed a Notice of Substitution of Counsel (of attorneys within firm) and Notice of Appeal on behalf of Burland.

41. On February 3, 2015, Respondent filed a successful Motion to Stay pending appeal.

42. On May 26, 2015, Respondent filed an Appellant Memorandum primarily challenging the veracity and memory of the arresting officers.

43. Despite Respondent briefing the appeal free of charge and paying all of the related costs, Burland lost the appeal on July 17, 2015.

COUNT FOUR (File No. 15-2949/Judge Harrington)

44. On November 3, 2015, at approximately 9:00 a.m., the Court simultaneously called the Pima County Superior Court cases of *State v. Way*, CR2011-4193/CR2015-2095 and *State v. Owens*, CR2011-53117. *Way* was

scheduled for a settlement conference/*Donald* hearing and *Owens* was scheduled for a Change of Plea/Status Conference.

45. Respondent was the attorney of record in both cases.

46. A copy of the transcript of the proceedings contains the following statements by the Judge:

“So yesterday at 4:00 o’clock my judicial assistant received a call from a – I believe a secretary, said she was from (Respondent’s) office, asking whether or not we had received and ruled on a motion to continue. We did not have a motion to continue. And so my JAA said – asked the secretary to e-mail the motion to continue down. And we got two motions to continue, and neither one has been filed with the clerk of the court. The one from Mr. Owens is captioned to be in the justice court, and it has the wrong case number. And the – in any event, we got these e-mailed down to us late last night. We did not rule on either one of these. By the time we got these, my JAA did not have an opportunity to talk to me about these, so I had her call this morning and said I would take these up at the hearing today. (Respondent) says that he is in a trial today in Maricopa County. But this is very odd, and I’m very concerned about what’s going on here for future proceedings.”

47. The Court verified that both clients retained Respondent and that the opposing attorney did not receive either motion.

48. After further discussion, the Judge’s staff informed the Court that the electronic record was updated to reflect that the *Way* motion to continue was filed

that morning. The Judge then reset the matters and concluded the proceedings at 9:21 a.m.

49. In response to the State Bar's investigation, Respondent submitted minute entries regarding his representation of a Maricopa County client in the Maricopa County Superior Court case of *State v. Zorn*, CR2014-135362.

50. By minute entry dated October 19, 2015, Respondent was present when the Maricopa County Court affirmed the *Zorn* trial date of October 26, 2015, before the Master Calendar Assignment Judge.

51. By minute entry dated October 26, 2015, Respondent was present when the Maricopa County Court reset the *Zorn* trial date to October 29, 2015, before the Master Calendar Assignment Judge.

52. By minute entry dated October 29, 2015, Respondent was present when the Maricopa County Court reset the *Zorn* trial date to November 2, 2015, before the Master Calendar Assignment Judge.

53. By minute entry dated October 30, 2015, Respondent was present telephonically when the Judge in the Pima County Superior Court case of *State v. Rheinlander*, CR20143956 continued the *Rheinlander* trial to November 3, 2015 based upon a note received from the Maricopa County Superior Court.

54. On November 3, 2015, Respondent appeared at the *Zorn* trial in Maricopa County.

55. A review of the *Zorn* electronic court file reveals the following events which were not disclosed by Respondent:

- a. On September 21, 2015, the Court vacated the September 21, 2015, trial date due to Respondent's failure to appear as ordered. The Court made several attempts to contact Respondent and, based upon the client's request, removed Respondent as attorney of record and ordered that new counsel be appointed; and
- b. On November 2, 2015, at 8:09 a.m., Respondent was ordered to appear before Judge Gass by 10:00 a.m. in order to set a trial schedule.

56. On November 3, 2015, Zorn accepted a plea offer.

COUNT FIVE (File No. 12-3190/Maddox)

57. On or about November 17, 2011, James and Margaret Maddox (hereinafter referred to as "Mr. and Mrs. Maddox") paid Respondent \$10,000.00 to represent their granddaughter, Sarah Hause.

58. The legal fees purportedly incurred during the representation exceeded the originally paid retainer.

59. In or around May 29, 2012, Mr. and Mrs. Maddox paid Respondent \$6,000.00 to represent their daughter, Margaret Mary Maddox, in an unrelated case.

60. The second case involved a relative that was incarcerated in the State of Indiana and held pending extradition to the State of Arizona.

61. Shortly after being retained, the State of Arizona released the extradition hold thereby eliminating the purpose of the representation.

62. A fee dispute arose between Mr. and Mrs. Maddox and Respondent when Respondent informed them that he would not refund any of the prepaid legal fees on their daughter's case as he applied them to the outstanding balance for the prior representation of their granddaughter.

63. After repeatedly requesting a refund, Mr. and Mrs. Maddox scheduled an in-person meeting with Respondent at his law office located at 4645 S. Lakeshore Drive in Tempe, Arizona (hereinafter referred to as "Office").

64. Eventually, the meeting was rescheduled to occur on November 16, 2012, at 12:00 pm.

65. Mr. and Mrs. Maddox arrived at Respondent's office on November 16, 2012, at approximately 11:55 am, but found the office door locked.

66. On November 19, 2012, Respondent's assistant, Catelyn Foster, contacted Mr. and Mrs. Maddox and rescheduled the meeting for November 20, 2012.

67. On November 20, 2012, Respondent met with Mr. and Mrs. Maddox to discuss the fee dispute.

68. The discussion escalated into a profane argument wherein Respondent chest bumped Mr. James Maddox before forcing Mr. and Mrs. Maddox out of the office.

69. Mr. and Ms. Maddox promptly contacted the Tempe Police Department.

70. The Tempe Police Department arrived and Respondent confirmed the substance of the fee dispute.

COUNT SIX (File No. 13-3041/Marshall)

71. In 2011, the State initiated the criminal case of *State v. Paul Walsh*, CR2011-146379 alleging that Paul stabbed his brother, John Walsh. During his police interview, Paul indicated that during a fight with John, Paul believed that John had picked up a brick so Paul stabbed John in "self-defense".

72. Paul hired Respondent as his sole attorney of record throughout the representation.

73. On or before August 23, 2012, Paul was sentenced pursuant to a plea agreement for one count of Aggravated Assault, a class 3 felony. Pursuant to the terms of the plea agreement, Paul was placed on 2 years of supervised probation with terms including, but not limited to, having no contact with John.

74. Respondent did not file a motion to withdraw from the representation.

75. In 2013, the State initiated the criminal case of *State v. John Walsh*, CR2013-429004 alleging that John shot his brother, Paul Walsh, then shot himself.

76. During an interview with first responders, John indicated that during a fight with Paul, John believed that Paul was going to kill him so John shot Paul in “self-defense”. John also informed the first responders of the prior stabbing incident. John reiterated these facts and circumstances during his police interview claiming that the shooting was a combination of self-defense and accident.

77. On or before July 8, 2013, John hired Respondent as his sole attorney and Respondent was the only attorney of record throughout his involvement in John’s case.

78. On July 22, 2013, the State filed a Motion to Determine Counsel alleging, among other things, that Respondent had a non-waivable conflict in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.9(c) as the brothers' interests were material adverse and Respondent would have to discredit Paul or divulge confidential information discovered during his representation of Paul.

79. On July 30, 2013, the Court found that Respondent did have a conflict of interest and removed Respondent from the case. The Court also appointed counsel to represent John.

80. On August 6, 2013, Respondent filed a motion to reconsider under seal arguing, among other things, that he did not obtain any "attorney-client" information from Paul and that the parents waived any conflict.

81. In the motion, Respondent alleges that he contacted the Ethics Hotline and verified that he could represent John.

82. When the State recounted a purported conversation between Respondent and detectives that Paul had been using drugs and becoming more violent, Respondent responded to the State asked where they obtained the statements and how the State could put any of Respondent's statements in context if they were not present. Respondent then states "[a]nd to suggest that Paul should

be regarded as 'bad' on account of an obvious neurological deterioration beyond his control is ludicrous...I suggest you google pschizophrenia, paranoia, and manic mood disorders. They are real, physical neurological disorders which are beyond the afflict-ed's ability to control anymore than Alzheimer's. And they are genetic."

83. On August 19, 2013, the Court denied the Motion for Reconsideration.

COUNT SEVEN (File No. 13-3189/Judicial Referral)

84. In 2013, the State initiated the criminal case of *State v. Dan Gaspar*, CR2013-106159.

85. On March 13, 2013, Respondent became Gaspar's sole attorney of record throughout the representation.

86. On June 24, 2013, the Court held an Initial Pretrial Conference and found that the State did comply with their disclosure obligations as set forth by Rule 15.1(a), Ariz. R. Crim. Pro. but that Respondent did not comply with his disclosure obligations as set forth by Rule 15.2, Ariz. R. Crim. Pro.

87. The Court ordered the coverage attorney appearing for Respondent to ensure that Respondent produce a Rule 15.2 disclosure statement within ten days.

88. On September 9, 2013, the State (MCAO) filed a Motion to Determine Counsel alleging that Respondent had a conflict of interest based upon the State (MCAO) initiating the Maricopa County Superior Court case of *State v. Palmisano*, CR2013-417385. The State also expressed concern that Respondent was “dealing with highly unusual, distracting personal circumstances that may interfere with...his representation of Dan Gaspar.”

89. On September 18, 2013, the Court found that Respondent did not have a conflict of interest but ordered that Respondent or his legal associates appear at all further hearings in the case. This order was due, in part, to Respondent’s reliance on court coverage attorneys appearing for Respondent.

90. On October 8, 2013, Respondent failed to appear at a status conference due to illness. At this hearing, the State made an oral motion for sanctions as Respondent failed to produce a Rule 15.2 disclosure statement as ordered by the Court.

91. The Court continued the hearing and ordered “that a Rule 15.2(b) Disclosure be filed by counsel for the Defendant no later than **October 11, 2013**, or Defense counsel will be sanctioned.” The Court also ordered “that counsel for

Defendant, Joseph Palmisano, shall appear in person on October 11, 2013, regardless of his health.”

92. On October 10, 2013, at 5:14 pm, the State filed a Motion for Sanctions indicating that Respondent failed to file a Rule 15.2 disclosure statement as ordered by the Court.

93. On October 11, 2013, Respondent appeared before the Court and the Court ordered that a Rule 15.2 disclosure statement be filed no later than October 14, 2013.

94. On October 18, 2013, the Court imposed a \$250.00 sanction against Respondent to be paid no later than 5:00 pm that day.

95. On October 30, 2013, the Court held a Final Trial Management Conference and questioned Respondent about his payment of the sanction. Respondent avowed that he paid the sanction as ordered by the Court. The Court ordered Respondent to provide proof of payment no later than 5:00 pm that day.

96. Later that day, the Court contacted the Clerk of Court’s office and discovered that Respondent did not pay the sanction as avowed. The Court also called Caitlyn Foster, Respondent’s secretary, and discovered that the payment was

not made as she was “unsure of whom to make the payment”. The Court then scheduled an Order to Show Cause Hearing for November 12, 2013.

97. On November 12, 2013, Respondent appeared at the Order to Show Cause Hearing and explained that he assumed that his assistant paid the sanction but she was out of the office so he could not timely verify the payment. Respondent was sanctioned an additional \$250.00 which was ordered to be paid by 4:00 pm that day.

98. Respondent paid the \$500.00 sanction as ordered.

CONDITIONAL ADMISSIONS

Respondent’s admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Based upon the facts stated above, Respondent conditionally admits that his conduct violated the following ethical rules:

Count 1 (SB 15-1753):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to comply with the requests of the client regarding the representation;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;

3. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 2 (SB 15-2362):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation which was the subject of the litigation;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 3 (SB 15-2394):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
2. Rule 42, Ariz. R. Sup. Ct., ER 5.1 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct; and

3. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 4 (SB 15-2949):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation of the above-listed client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with the above-listed client;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation which was the subject of the litigation;
4. Rule 42, Ariz. R. Sup. Ct., ER 5.3 – As the owner and managing attorney of ALG, Respondent failed to reasonably ensure that the firm had in effect measures giving reasonable assurance that all nonlawyers' conduct is compatible with the professional obligations of the lawyer; and
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of law.

Count 5 (SB 12-3190):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent accepted prepaid legal fees related to his anticipated representation of one client, but applied the fees to the outstanding bill of another client;
2. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to promptly return the unearned fees and property; and
3. Rule 41(g)/31(a)(E) – Respondent engaged in unprofessional conduct as defined by Rule 31(a)(E).

Count 6 (SB 13-3041):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.6 – Respondent revealed information related to the representation of a client without the client's informed consent;

2. Rule 42, Ariz. R. Sup. Ct., ER 1.9(a) – Respondent formerly represented a client in a matter and thereafter represented another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client when the former client did not give informed consent in writing;
3. Rule 42, Ariz. R. Sup. Ct., ER1.9 (c) – Respondent formerly represented a client in a matter and thereafter used information relating to the representation to the disadvantage of the former client; and
4. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

Count 7 (SB 13-3189):

1. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently during the representation;
2. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to expedite the litigation;
3. Rule 42, Ariz. R. Sup. Ct., ER 3.4(c) – Respondent knowingly disobeyed an obligation under the rules of a tribunal;
4. Rule 42, Ariz. R. Sup. Ct., ER 3.4(d) – In pretrial procedures, Respondent failed to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;
5. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct that was prejudicial to the administration of law; and
6. Rule 54(c), Ariz. R. Sup. Ct. – Respondent knowingly violated the rules and orders of the court.

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Six Month Suspension with Two Years of Probation.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard 3.0*.

The parties agree that the *Standards* set forth below are the appropriate *Standards* given the facts and circumstances of this matter:

Rule 41(g) [Unprofessional Conduct]:

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.

Rule 42, Ariz. R. Sup. Ct., ERs 1.2 [Client Authority], 1.3 [Diligence], 1.4 [Communication] and 1.5 [Fees]:

Standard 4.42

Suspension is generally appropriate when a lawyer: a) knowingly fails to perform services for a client or b) engages in a pattern of neglect and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 1.6 [Failure to Preserve Client's Confidences]:

Standard 4.22

Suspension is generally appropriate when a lawyer knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 1.9 [Conflict of Interest – Former Client]:

Standard 4.32

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 1.16 [Termination of Representation]:

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.

Rule 42, Ariz. R. Sup. Ct., ER 3.2 [Expedite Litigation]:

Standard 6.22

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Rule 42, Ariz. R. Sup. Ct., ER 3.4 [Fairness]:

Standard 6.22

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Rule 42, Ariz. R. Sup. Ct., ER 5.1 & 5.3 [Supervisory Role]:

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.

Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) [Conduct Prejudicial To Admin. of Justice]:

Standard 6.22

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Rule 54(c) [Violation of Rules]:

Standard 4.62

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

The duty violated

As described above, Respondent's conduct violated his duty to his clients, the profession, the legal system and the public.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly and negligently violated the above-referenced ethical rules and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual and potential harm to his clients, the profession, the legal system and the public.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(a) prior disciplinary offenses [SB 14-1278 (2014) – Admonition for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.5 and 3.4(c) for retaining unreasonable fees and failing to timely comply with a fee arbitration order];

Standard 9.22(c) a pattern of misconduct;

Standard 9.22(d) multiple offenses; and

Standard 9.22(i) substantial experience in the practice of law [Approximately 26 Years].

In mitigation:

None.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following:

All of the counts currently before the Court all involve misconduct related to the failings of Respondent's management of the law office and staff. While Respondent did attempt to improve the management of his law firm and staff, the number of incidents and pattern of mismanagement caused harmed to the profession and the administration of justice warranting the imposition of the presumptive sanction of suspension.

To Respondent's credit he had successfully practiced law for 25 years without incident, until the series of complaints that are the subject of this agreement. The exacerbation of existing health problems also became a contributing factor to the Respondent's ability to practice and oversee the management of his offices in Phoenix and Tucson. He suffers from Barrett's Esophagus disease which required major surgeries in 2016 and Corneal transplant surgery due to macular degeneration had to be performed in 2015, which resulted in debilitating migraine headaches.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

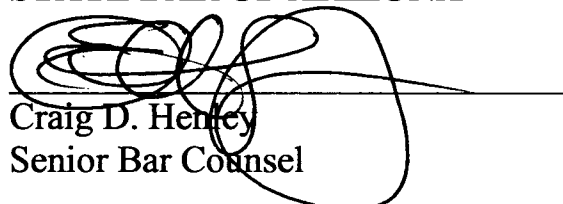
The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a Six Month Suspension with Two Years of Probation and the imposition of costs and expenses.

The parties will submit a separate pleading under seal regarding the effective date of the suspension.

A proposed form order is attached hereto as Exhibit B.

DATED this 28th day of April, 2017.

STATE BAR OF ARIZONA


Craig D. Henley
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this _____ day of April, 2017.

Joseph P. Palmisano
Respondent

DATED this _____ day of April, 2017.
Kimerer & Derrick, PC

Michael D. Kimerer

Approved as to form and content

Maret Vessella
Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of April, 2017.

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 28th day of April, 2017.



Joseph P. Palmisano
Respondent


DATED this 28th day of April, 2017.

Kimerer & Derrick, PC



Michael D. Kimerer

Approved as to form and content



Maret Vessella
Chief Bar Counsel

**Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of April, 2017.**

Copy of the foregoing emailed
this 28th day of April, 2017, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 28th day of April, 2017, to:

Michael D. Kimerer
Kimerer & Derrick, PC
1313 E. Osborn Road, Suite 100
Phoenix, Arizona 85014-5684
Email: mdk@kimerer.com
Telephone: 602-279-5900
Respondent's Counsel

Copy of the foregoing hand-delivered
this 28th day of April, 2017, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: 

CDH:nr

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Joseph P. Palmisano, Bar No. 012839, Respondent

File Nos. 15-1753, 12-3190, 13-3041, 15-3189, 15-2362, 15-2394, 15-2949

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$ 1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven.

(2 over 5 x (20% x Gen. Admin cost)): \$ 480.00

TOTAL COSTS AND EXPENSES INCURRED \$1,680.00

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A
CURRENT MEMBER OF
THE STATE BAR OF ARIZONA,**

**JOSEPH P. PALMISANO,
Bar No. 012839,**

Respondent.

PDJ 2016-9098

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 15-1753, 15-2362,
15-2394, 15-2949, 12-3190, 13-3041
and 13-3189]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Joseph P. Palmisano**, is hereby suspended for a period of 6 months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective _____.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two years.

IT IS FURTHER ORDERED that participate and complete the State Bar's Law Office Management Assistance Program (LOMAP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order/Agreement. Respondent shall submit to a LOMAP assessment and examination of the law firm's office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED that participate and complete the State Bar's Member Assistance Program (MAP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order/Agreement. Respondent shall submit to a MAP assessment and complete all recommended treatment and terms. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with MAP.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of April, 2017.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of April, 2017.

Copies of the foregoing mailed/emailed
this _____ day of April, 2017, to:

Michael D. Kimerer
Kimerer & Derrick, PC
1313 E. Osborn Road, Suite 100
Phoenix, Arizona 85014-5684
Email: mdk@kimerer.com
mdk@kimerer.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of April, 2017, to:

Craig D. Henley
Senior Bar Counsel - Litigation
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of April, 2017 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____